

SENATE BILL NO. 312

INTRODUCED BY C. VINCENT, G. BENNETT, CUFFE, HAMLETT, MURPHY, WAGNER, KEANE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING METAL MINE RECLAMATION LAWS; REQUIRING THAT DRAFT PERMITS BE ISSUED FOR COMPLETE AND COMPLIANT APPLICATIONS; REVISING COORDINATION OF PERMIT REVIEWS WITH THE MONTANA ENVIRONMENTAL POLICY ACT; AND AMENDING SECTIONS 82-4-303, 82-4-305, 82-4-335, 82-4-337, 82-4-342, AND 82-4-353, MCA."

WHEREAS, the metal mine reclamation laws provide substantive requirements for the permitting of metal mines in Montana; and

WHEREAS, the Montana Environmental Policy Act provides procedures for environmental assessment with respect to decisions of state agencies; and

WHEREAS, coordination of review of permit applications for compliance with substantive requirements of mine permitting statutes and environmental assessment of permit decisions would create efficiency, reduce burdens on state government, and require permit applicants to more fully bear the burden of providing complete permit applications that meet all requirements of the metal mine reclamation laws and other laws of the state related to mine permitting in a timely fashion; and

WHEREAS, completion of the requirements of the Montana Environmental Policy Act within the timeframes required can be facilitated by an initial determination of compliance with applicable permitting laws and regulations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 82-4-303, MCA, is amended to read:

**"82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. ~~A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that~~



1 ~~will not significantly affect the human environment.~~ A MAJOR AMENDMENT IS AN AMENDMENT THAT MAY SIGNIFICANTLY  
 2 AFFECT THE HUMAN ENVIRONMENT. A MINOR AMENDMENT IS AN AMENDMENT THAT WILL NOT SIGNIFICANTLY AFFECT THE  
 3 HUMAN ENVIRONMENT.

4 (3) "Board" means the board of environmental review provided for in 2-15-3502.

5 (4) "Completeness" means that an application contains information addressing each applicable permit  
 6 requirement as listed in this part or rules adopted pursuant to this part in sufficient detail for the department to  
 7 make a decision as to adequacy of the application to meet the requirements of this part.

8 ~~(4)~~(5) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in  
 9 leaching operations.

10 ~~(5)~~(6) "Department" means the department of environmental quality provided for in 2-15-3501.

11 ~~(6)~~(7) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at  
 12 the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste  
 13 materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out  
 14 facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not  
 15 been previously reclaimed under the reclamation plan.

16 ~~(7)~~(8) "Exploration" means:

17 (a) all activities that are conducted on or beneath the surface of lands and that result in material  
 18 disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and  
 19 economic viability of mineralization in those lands, if any, other than mining for production and economic  
 20 exploitation; and

21 (b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

22 ~~(8)~~(9) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel,  
 23 peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for the  
 24 purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing  
 25 or for stockpiling for future use, refinement, or smelting.

26 ~~(9)~~(10) "Mining" commences when the operator first mines ores or minerals in commercial quantities for  
 27 sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing  
 28 in excess of the aggregate of 10,000 short tons.

29 ~~(10)~~(11) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard  
 30 hard-rock mineral concentration processes.

1           ~~(11)~~(12) "Person" means any person, corporation, firm, association, partnership, or other legal entity  
2 engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or  
3 waste materials, or operation of a hard-rock mill.

4           ~~(12)~~(13) "Placer deposit" means:

5           (a) naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian, colluvial,  
6 or alluvial deposits lying above bedrock; or

7           (b) all forms of deposit except veins of quartz and other rock in place.

8           ~~(13)~~(14) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or  
9 persons.

10          ~~(14)~~(15) "Reclamation plan" means the operator's written proposal, as required and approved by the  
11 department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical  
12 at the time of application for an operating permit:

13          (a) a statement of the proposed subsequent use of the land after reclamation, which may include use  
14 of the land as an industrial site not necessarily related to mining;

15          (b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the  
16 land after reclamation is completed and the proposed method of accomplishment;

17          (c) the manner and type of revegetation or other surface treatment of disturbed areas;

18          (d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public  
19 safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

20          (e) the method of disposal of mining debris;

21          (f) the method of diverting surface waters around the disturbed areas when necessary to prevent  
22 pollution of those waters or unnecessary erosion;

23          (g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and  
24 pollution;

25          (h) maps and other supporting documents that may be reasonably required by the department; and

26          (i) a time schedule for reclamation that meets the requirements of 82-4-336.

27          ~~(15)~~(16) "Rock products" means decorative rock, building stone, riprap, mineral aggregates, and other  
28 minerals produced by typical quarrying activities or collected from or just below the ground surface.

29          ~~(16)~~(17) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is not  
30 exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste

1 materials, that, except as provided in 82-4-310, knowingly allows other persons to engage in mining activities on  
2 land owned or controlled by the person, firm, or corporation, that does not hold an operating permit under  
3 82-4-335 except for a permit issued under 82-4-335(3) or a permit that meets the criteria of subsection (16)(c)  
4 of this section, and that conducts:

5 (i) an operation that results in not more than 5 acres of the earth's surface being disturbed and  
6 unreclaimed; or

7 (ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the  
8 respective mining properties are:

9 (A) the only operations engaged in by the person, firm, or corporation; and

10 (B) at least 1 mile apart at their closest point.

11 (b) For the purpose of this definition only, the department shall, in computing the area covered by the  
12 operation:

13 (i) exclude access or haulage roads that are required by a local, state, or federal agency having  
14 jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department  
15 in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

16 (ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in  
17 the amount of the estimated total cost of reclamation along with a description of the location of the road and the  
18 specifications to which it will be constructed.

19 (c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit  
20 may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100  
21 acres at any time.

22 ~~(17)~~(18) "Soil materials" means earth material found in the upper soil layers that will support plant growth.

23 ~~(18)~~(19) (a) "Surface mining" means all or any part of the process involved in mining of minerals by  
24 removing the overburden and mining directly from the mineral deposits exposed, including but not limited to  
25 open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all  
26 similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

27 (b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat,  
28 soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other  
29 onsite building construction.

30 ~~(19)~~(20) "Underground mining" means all methods of mining other than surface mining.

1           ~~(20)~~(21) "Unit of surface-mined area" means that area of land and surface water included within an  
2 operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date  
3 of the issuance of the permit. The term includes the area from which overburden or minerals have been removed,  
4 the area covered by mining debris, and all additional areas used in surface mining or underground mining  
5 operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed  
6 portions of land.

7           ~~(21)~~(22) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of  
8 natural cover considered suitable at time of reclamation."  
9

10           **Section 2.** Section 82-4-305, MCA, is amended to read:

11           **"82-4-305. Exemption -- small miners -- written agreement.** (1) Except as provided in subsections  
12 (3) through (11), the provisions of this part do not apply to a small miner if the small miner annually agrees in  
13 writing:

14           (a) that the small miner will not pollute or contaminate any stream;

15           (b) that the small miner will provide protection for human and animal life through the installation of  
16 bulkheads installed over safety collars and the installation of doors on tunnel portals;

17           (c) that the small miner will provide a map locating the miner's mining operations. The map must be of  
18 a size and scale determined by the department.

19           (d) if the small miner's operations are placer or dredge mining, that the small miner shall salvage and  
20 protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations  
21 to comparable utility and stability as that of adjacent areas.

22           (2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or  
23 continue an exemption under subsection (1) unless the small miner annually certifies in writing:

24           (a) if the small miner is an individual, that:

25           (i) no business association or partnership of which the small miner is a member or partner has a  
26 small-miner exemption; and

27           (ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of  
28 any class of voting stock has a small-miner exemption; or

29           (b) if the small miner is a partnership or business association, that:

30           (i) none of the associates or partners holds a small-miner exemption; and

1 (ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of  
2 voting stock of a corporation that has a small-miner exemption; or

3 (c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any  
4 class of voting stock of the corporation:

5 (i) holds a small-miner exemption;

6 (ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

7 (iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another  
8 corporation that holds a small-miner exemption.

9 (3) A small miner whose operations are placer or dredge mining shall post a performance bond equal  
10 to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed  
11 \$10,000 for each operation. If the small miner has posted a bond for reclamation with another government  
12 agency, the small miner is exempt from the requirement of this subsection.

13 (4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the  
14 small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge  
15 for services performed by state personnel and for state materials and equipment used. If the small miner posts  
16 a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for  
17 the remainder of the reasonable costs to the state of reclaiming the operation.

18 (5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation  
19 of the operation within 6 months after cessation of mining or within an extended period allowed by the department  
20 for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the  
21 small miner by certified mail that it intends to reclaim the operation unless the small miner commences  
22 reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address  
23 stated on the small miner exclusion statement or, if the small miner has notified the department of a different  
24 address by letter or in the annual certification form, to the most recent address given to the department. If the  
25 small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department  
26 may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and  
27 enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable  
28 costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation  
29 costs, as set forth in subsection (6), before or after it incurs those costs.

30 (6) To collect additional reclamation costs, the department shall notify the small miner by certified mail,

1 at the address determined under subsection (5), of the additional reasonable reclamation costs and request  
2 payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the  
3 department may bring an action in district court for payment of the estimated future costs and, if the department  
4 has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it  
5 determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon  
6 completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or  
7 the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred  
8 by the department.

9 (7) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents  
10 or reagents shall obtain an operating permit for that part of the small miner's operation in which the cyanide  
11 ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of. The acreage  
12 disturbed by the operation using cyanide ore-processing reagents or other metal leaching solvents or reagents  
13 and covered by the operating permit is excluded from the 5-acre limit specified in ~~82-4-303(16)(a)(i)~~  
14 82-4-303(17)(a)(i) and ~~(16)(a)(ii)~~ (17)(a)(ii).

15 (8) (a) Except for a small miner proposing to conduct a placer or dredge mining operation, a small miner  
16 who intends to use an impoundment to store waste from ore processing shall obtain approval for the design,  
17 construction, operation, and reclamation of that impoundment and post a performance bond for that part of the  
18 small miner's operation before constructing an impoundment. The small miner shall post a performance bond  
19 equal to the state's documented cost estimate of reclaiming the disturbed land. If the small miner has posted a  
20 bond for reclamation of that site with a federal government agency, the small miner is exempt from the  
21 requirements of this subsection (8)(a).

22 (b) The department shall conduct a review of the adequacy of the bond posted by a small miner using  
23 an impoundment pursuant to this section at least once every 5 years and adjust the bond if necessary to ensure  
24 reclamation of the impoundment. The acreage disturbed by the portion of the operation that uses an  
25 impoundment to store waste from ore processing is included in the 5-acre limit specified in ~~82-4-303(16)(a)(i)~~  
26 82-4-303(17)(a)(i) and ~~(16)(a)(ii)~~ (17)(a)(ii) and is subject to the provisions of this subsection (8).

27 (c) If a small miner under this subsection (8) fails to reclaim the operation, the small miner is liable to the  
28 department for all its reasonable costs of reclamation, including a reasonable charge for services performed by  
29 state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety  
30 is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the

1 reasonable costs to the state of reclaiming the operation.

2 (d) If a small miner under this subsection (8) fails to commence reclamation of the operation within 6  
3 months after cessation of mining or within an extended period allowed by the department for good cause shown  
4 or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified  
5 mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and  
6 diligently completes the reclamation. The notice must be mailed to the address stated on the small miner  
7 exclusion statement or, if the small miner has notified the department of a different address by letter or in the  
8 annual certification form, to the most recent address given to the department. If the small miner fails to commence  
9 reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner  
10 exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the  
11 operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation  
12 exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in  
13 subsection (8)(e), before or after it incurs those costs.

14 (e) To collect additional reclamation costs, the department shall notify the small miner by certified mail,  
15 at the address determined under subsection (8)(d), of the additional reasonable reclamation costs and request  
16 payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the  
17 department may bring an action in district court for payment of the estimated future costs and, if the department  
18 has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it  
19 determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon  
20 completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or  
21 the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred  
22 by the department.

23 (f) Except for a small miner who conducts a placer or dredge mining operation, a small miner utilizing  
24 an impoundment to store waste from ore processing on or after April 28, 2005, shall obtain approval of the design,  
25 construction, operation, and reclamation of that impoundment and post a performance bond within 6 months of  
26 April 28, 2005. If the small miner has posted a bond for reclamation of that site with a federal government agency,  
27 the small miner is exempt from the requirements of this subsection (8)(f).

28 (9) The exemption provided in this section does not apply to a person:

29 (a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit  
30 or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions



1 described under 82-4-360;

2 (b) who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

3 (c) who has failed to post a reclamation bond required by this section, unless the department has  
4 certified that the area for which the bond should have been posted has been reclaimed by that person or  
5 reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

6 (d) who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the  
7 department has completed the abatement and the person has reimbursed the department for the cost of  
8 abatement.

9 (10) The exemption provided in this section does not apply to an area:

10 (a) under permit pursuant to 82-4-335;

11 (b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any  
12 other state or federal agency; or

13 (c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a  
14 public agency, under supervision of a public agency, or using public funds.

15 (11) A small miner may not use mercury except in a contained facility that prevents the escape of any  
16 mercury into the environment."

17

18 **Section 3.** Section 82-4-335, MCA, is amended to read:

19 **"82-4-335. Operating permit -- limitation -- fees.** (1) A person may not engage in mining, ore  
20 processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide  
21 ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those  
22 activities in the state without first obtaining ~~an~~ a final operating permit from the department. Except as provided  
23 in subsection (2), a separate, final, operating permit is required for each complex.

24 (2) (a) A person who engages in the mining of rock products or a landowner who allows another person  
25 to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple  
26 sites if each of the multiple sites does not:

27 (i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or  
28 ground water;

29 (ii) have any water impounding structures other than for storm water control;

30 (iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

1 (iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as  
2 threatened or endangered under the Endangered Species Act of 1973; or

3 (v) impact significant historic or archaeological features.

4 (b) A landowner who is a permittee and who allows another person to mine on the landowner's land  
5 remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all  
6 mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission.  
7 The performance bond required under this part is and must be conditioned upon compliance with this part, the  
8 rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the  
9 landowner's consent.

10 (3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents  
11 or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide  
12 ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

13 (4) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee  
14 of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an  
15 additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal  
16 operating expenses of the department whenever those expenses are reasonably necessary to provide for timely  
17 and adequate review of the application, including any environmental review conducted under Title 75, chapter  
18 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines  
19 that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the  
20 applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The  
21 department shall provide the applicant an opportunity to review the department's estimated expenses. The  
22 applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

23 (5) The person shall submit an application on a form provided by the department, which must contain  
24 the following information and any other pertinent data required by rule:

25 (a) the name and address of the operator and, if a corporation or other business entity, the name and  
26 address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and  
27 its resident agent for service of process, if required by law;

28 (b) the minerals expected to be mined;

29 (c) a proposed reclamation plan;

30 (d) the expected starting date of operations;

1 (e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed,  
2 the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately  
3 adjacent to the area, and the location of proposed access roads to be built;

4 (f) the names and addresses of the owners of record and any purchasers under contracts for deed of  
5 the surface of the land within the permit area and the owners of record and any purchasers under contracts for  
6 deed of all surface area within one-half mile of any part of the permit area, provided that the department is not  
7 required to verify this information;

8 (g) the names and addresses of the present owners of record and any purchasers under contracts for  
9 deed of all minerals in the land within the permit area, provided that the department is not required to verify this  
10 information;

11 (h) the source of the applicant's legal right to mine the mineral on the land affected by the permit,  
12 provided that the department is not required to verify this information;

13 (i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

14 (j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of  
15 the operation;

16 (k) ground water and surface water hydrologic data gathered from a sufficient number of sources and  
17 length of time to characterize the hydrologic regime;

18 (l) a plan detailing the design, operation, and monitoring of impounding structures, including but not  
19 limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

20 (m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable  
21 materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

22 (n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for  
23 expansion of the tailings impoundment or waste site; and

24 (o) an assessment of the potential for the postmining use of mine-related facilities for other industrial  
25 purposes, including evidence of consultation with the county commission of the county or counties where the  
26 mine or mine-related facilities will be located.

27 (6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale  
28 mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may  
29 not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written  
30 guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule

1 with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply  
2 with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock  
3 mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact  
4 board that the permittee is in compliance.

5 (7) When the department determines that a permittee has become or will become a large-scale mineral  
6 developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months  
7 of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a  
8 waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an  
9 impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does  
10 not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee  
11 has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter  
12 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the  
13 hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review  
14 and implementation requirements.

15 (8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing  
16 when the aggregate samples are less than 10,000 tons.

17 (9) A person may not be issued an operating permit if:

18 (a) that person's failure, or the failure of any firm or business association of which that person was a  
19 principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or  
20 a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department  
21 or the completion of reclamation by the person's surety or by the department, unless that person meets the  
22 conditions described in 82-4-360;

23 (b) that person has not paid a penalty for which the department has obtained a judgment pursuant to  
24 82-4-361;

25 (c) that person has failed to post a reclamation bond required by 82-4-305; or

26 (d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the  
27 department has completed the abatement and the person has reimbursed the department for the cost of  
28 abatement.

29 (10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the  
30 person provides the current information required in subsection (5)(a) and:

- 1 (a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of  
 2 this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or  
 3 (ii) presents a certification by the administering agency that the violation is in the process of being  
 4 corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and  
 5 (b) if the person is a partnership, corporation, or other business association, provides the certification  
 6 required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10%  
 7 or more of any class of voting stock, and business association members."  
 8

9 **Section 4.** Section 82-4-337, MCA, is amended to read:

10 **"82-4-337. Inspection -- issuance of operating permit -- modification, ~~or, amendment, or revision,~~**  
 11 **OR REVISION.** (1) (a) The department shall review all applications for operating permits for completeness and  
 12 compliance with the requirements of this part and rules adopted pursuant to this part within ~~60~~ 90 days of receipt  
 13 of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial  
 14 ~~completeness~~ notice must note all deficiency issues, and the department may not in a later ~~completeness~~ notice  
 15 raise an issue pertaining to the initial application that was not raised in the initial notice. ~~The department may,~~  
 16 ~~however, raise any deficiency during the adequacy review pursuant to subsection (1)(b).~~ The department shall  
 17 notify the applicant concerning completeness and compliance as soon as possible. An application is considered  
 18 complete and compliant unless the applicant is notified of ~~any~~ deficiencies within the appropriate review period.  
 19 ~~—— (b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), unless the review period is extended as~~  
 20 ~~provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of~~  
 21 ~~operation within 30 days of the determination that the application is complete or within 60 days of receipt of the~~  
 22 ~~application if the department does not notify the applicant of any deficiencies in the application.~~

23 (b) The review for completeness and compliance is limited to areas in regard to which the department  
 24 has statutory authority.

25 (c) When providing notice of deficiencies, the department shall:

- 26 ~~—— (i) identify each section in this part or rules adopted pursuant to this part related to the deficiency; and~~  
 27 ~~—— (ii) provide options to remedy the deficiency.~~

28 (d) When an application is complete and compliant, the department shall:

29 (i) declare in writing that the application is complete and compliant;

30 (ii) detail in writing the substantive requirements of this part and how the application complies with those

1 requirements; AND

2 (iii) issue a draft permit. The department may, as a condition of issuing the draft permit, require that the  
 3 applicant obtain other permits required by law but not provided for in this part. However, the department may not  
 4 withhold issuance of the draft permit in the absence of those permits; and.

5 (e) Prior to issuance of a draft permit, the department shall inspect the site. If the site is not accessible  
 6 because of extended adverse weather conditions, the department shall inspect the site at the first available  
 7 opportunity and may extend the time period prescribed in subsection (1)(a) by a term agreed to by the applicant.

8 (f) Issuance of the draft permit as a final permit is the proposed state action subject to review required  
 9 by Title 75, chapter 1.

10 (g) If the applicant is not notified of that there are deficiencies or inadequacies in the proposed  
 11 reclamation plan and plan of operation application or that the application is compliant within the time period  
 12 required by subsection (1)(a), the final operating permit must be issued upon receipt of the bond as required in  
 13 82-4-338 and pursuant to the requirements of subsection (1)(c) (1)(h) of this section. The department shall  
 14 promptly notify the applicant of the form and amount of bond that will be required. After the department notifies  
 15 the applicant of deficiencies in the application within the time period required by subsection (1)(a), no further  
 16 action by the department is required until the applicant has responded to the deficiency notification.

17 ~~(e)(h)~~ A Except as provided in (1)(g), a final permit may not be issued until:

18 (i) sufficient bond has been submitted pursuant to 82-4-338;

19 (ii) the information and certification have been submitted pursuant to 82-4-335(10); and

20 (iii) the department has found that permit issuance is not prohibited by 82-4-335(9) or 82-4-341(7);

21 (iv) the review pursuant to Title 75, chapter 1, is completed or 1 year has elapsed after the date the draft  
 22 permit was issued, whichever is less. The applicant may by written waiver extend this time period.

23 (v) the department has made a determination that the application and the final permit meet the  
 24 substantive requirements of this part and the rules adopted pursuant to this part.

25 ~~———(d) (i) Prior to issuance of a permit, the department shall inspect the site, unless the department has~~  
 26 ~~failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because~~  
 27 ~~of extended adverse weather conditions, the department may extend the time period prescribed in subsection~~  
 28 ~~(1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall~~  
 29 ~~serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject~~  
 30 ~~to appeal to the board in accordance with the Montana Administrative Procedure Act.~~

1 ~~———— (ii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed for~~  
 2 ~~analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the~~  
 3 ~~department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) of this section~~  
 4 ~~by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.~~

5 ~~(iii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed to~~  
 6 ~~review the application and reclamation plan for a major operation, the department and the applicant shall~~  
 7 ~~negotiate to extend the period prescribed in subsection (1)(b) of this section by not more than 365 days in order~~  
 8 ~~to permit reasonable review. The applicant may by written waiver extend this time period.~~

9 ~~(iv)(i)~~ If the department decides to hire a third-party contractor to prepare an environmental impact  
 10 statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to  
 11 the department and shall provide the applicant with a copy of the list. The applicant shall provide the department  
 12 with a list of at least 50% of the contractors from the department's list. The department shall select its contractor  
 13 from the list provided by the applicant.

14 ~~———— (v) Failure of the department to act upon a complete application within the extension period constitutes~~  
 15 ~~approval of the application, and the permit must be issued promptly upon receipt of the bond as required in~~  
 16 ~~82-4-338.~~

17 (2) (a) After issuance of a draft permit but prior to receiving a final permit, an applicant may propose  
 18 modifications to the application. The applicant may negotiate with the department on permit stipulations to  
 19 address compliance issues. The department may not impose permit stipulations in a draft or final permit without  
 20 prior agreement with the applicant. IF THE PROPOSED MODIFICATIONS SUBSTANTIALLY CHANGE THE PROPOSED PLAN  
 21 OF OPERATION OR RECLAMATION, THE DEPARTMENT MAY TERMINATE THE DRAFT PERMIT AND REVIEW THE APPLICATION  
 22 AS MODIFIED PURSUANT TO SUBSECTION (1) FOR COMPLETENESS AND COMPLIANCE AND ISSUANCE OF A NEW DRAFT  
 23 PERMIT.

24 (B) THE DEPARTMENT SHALL CONSULT WITH THE APPLICANT BEFORE PLACING STIPULATIONS IN A DRAFT OR FINAL  
 25 PERMIT. Permit stipulations in a draft or final permit may, UNLESS THE APPLICANT CONSENTS, address only  
 26 compliance issues within the substantive requirements of this part AND/OR RULES ADOPTED PURSUANT TO THIS PART.  
 27 FOR A STIPULATION IMPOSED WITHOUT THE APPLICANT'S CONSENT, THE DEPARTMENT SHALL PROVIDE TO THE APPLICANT  
 28 IN WRITING THE REASON FOR THE STIPULATION, A CITATION TO THE STATUTE OR RULE THAT GIVES THE DEPARTMENT THE  
 29 AUTHORITY TO IMPOSE THE STIPULATION, AND, FOR A STIPULATION IMPOSED IN THE FINAL PERMIT THAT WAS NOT  
 30 CONTAINED IN THE DRAFT PERMIT, THE REASON THAT THE STIPULATION WAS NOT CONTAINED IN THE DRAFT PERMIT.

1 ~~(b)(C)~~ Within 40 days of the completion of the review required by Title 75, chapter 1, or 1 year from the  
 2 date the draft permit is issued, whichever is less, the department shall issue its bond determination.

3 ~~(e)(D)~~ When the department prepares an environmental review jointly with a federal agency acting under  
 4 the National Environmental Policy Act, the applicant may by written waiver extend the 1-year deadline contained  
 5 in subsection (1)(g)(iv).

6 ~~(d)(E)~~ Upon submission of the bond AND SUBJECT TO SUBSECTION (1)(H), the department shall issue the  
 7 final permit.

8 ~~(2)(3)~~ The final operating permit must be granted for the period required to complete the operation and  
 9 is valid until the operation authorized by the permit is completed or abandoned, unless the permit is suspended  
 10 or revoked by the department as provided in this part.

11 ~~(3)(4)~~ The final operating permit must provide that the reclamation plan may be modified by the  
 12 department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time  
 13 during the term of the permit and for any of the following reasons:

14 (a) to modify the requirements so that they will not conflict with existing laws;

15 (b) when the previously adopted reclamation plan is impossible or impracticable to implement and  
 16 maintain;

17 (c) when significant environmental problem situations not permitted under the terms of regulatory permits  
 18 held by the permittee are revealed by field inspection and the department has the authority to address them under  
 19 the provisions of this part.

20 ~~(4) (a)(5)~~ (A) The modification of an a final operating permit may be a major or minor permit by an MAY  
 21 BE A MAJOR OR MINOR PERMIT amendment or a permit revision. A modification of the operating permit, including  
 22 a PERMIT REVISION. A MODIFICATION OF THE OPERATING PERMIT, INCLUDING A modification necessary to conform to  
 23 comply with the requirements of existing law as interpreted by a court of competent jurisdiction; must be  
 24 processed in accordance with the procedures for an application for a permit amendment or revision OR REVISION  
 25 that are established pursuant to 82-4-342 and this section, including any environmental analysis required by Title  
 26 75, chapter 1, part 2.

27 (B) THE MODIFICATION OF AN OPERATING PERMIT MAY NOT BE FINALIZED AND AN EXISTING BOND AMOUNT MAY  
 28 NOT BE INCREASED UNTIL THE PERMIT MODIFICATION PROCEDURES AND ANALYSIS DESCRIBED IN SUBSECTION (5)(A) ARE  
 29 COMPLETED.

30 ~~(b) The modification of an operating permit may not be finalized and an existing bond amount may not~~



1 ~~be increased until the permit modification procedures and analysis described in subsection (4)(a) are completed.~~

2 ~~———(5) During the term of an operating permit, an operator may apply for an amendment or revision to the~~  
 3 ~~permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.~~

4 ~~———(6) Applications for major amendments must be processed in the same manner as applications for new~~  
 5 ~~permits.~~

6 ~~———(7) Major amendments are those that may significantly affect the environment. Minor amendments are~~  
 7 ~~those that will not significantly affect the environment. The board may by rule establish criteria for classification~~  
 8 ~~of amendments as major or minor. The rules must establish requirements for the content of applications for~~  
 9 ~~amendments and revisions and procedures for processing of minor amendments.~~

10 ~~———(8) If the department demonstrates that a revision may result in a significant environmental impact that~~  
 11 ~~was not previously and substantially evaluated in an environmental impact statement, the application must be~~  
 12 ~~processed in the same manner as is provided for new permits. Except as provided in 75-1-208(4)(b), applications~~  
 13 ~~for minor amendments and other revisions must be processed within 30 days of receipt of an application."~~

14

15 **Section 5.** Section 82-4-342, MCA, is amended to read:

16 **"82-4-342. Amendment to operating permits.** (1) During the term of an operating permit issued under  
 17 this part, an operator may apply for A PERMIT REVISION AS DESCRIBED IN SUBSECTIONS (5)(G) THROUGH (5)(J) OR an  
 18 amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except  
 19 following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under  
 20 82-4-338.

21 (2) ~~(a)(A)~~ (A) The board may by rule establish criteria for the ~~classification of amendments as major or minor.~~  
 22 ~~The board shall adopt rules establishing requirements for the~~ CLASSIFICATION OF AMENDMENTS AS MAJOR OR MINOR.  
 23 THE BOARD SHALL ADOPT RULES ESTABLISHING REQUIREMENTS FOR THE content of applications for ~~major and minor~~  
 24 REVISIONS AND MAJOR AND MINOR amendments and the procedures for processing ~~minor~~ REVISIONS AND MINOR  
 25 amendments.

26 ~~———(b) An amendment must be considered minor if:~~

27 ~~———(i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;~~

28 ~~———(ii) evidence is submitted showing that a local government has requested retention of the mine-related~~  
 29 ~~facilities for a postmining use; and~~

30 ~~———(iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.~~

1 (B) AN AMENDMENT MUST BE CONSIDERED MINOR IF:

2 (I) IT IS FOR THE PURPOSE OF RETENTION OF MINE-RELATED FACILITIES THAT ARE VALUABLE FOR POSTMINING  
3 USE;

4 (II) EVIDENCE IS SUBMITTED SHOWING THAT A LOCAL GOVERNMENT HAS REQUESTED RETENTION OF THE MINE-  
5 RELATED FACILITIES FOR A POSTMINING USE; AND

6 (III) THE POSTMINING USE OF THE MINE-RELATED FACILITIES MEETS THE REQUIREMENTS PROVIDED FOR IN 82-4-  
7 336.

8 (3) Applications for ~~major~~ MAJOR amendments must be processed pursuant to 82-4-337.

9 ~~———— (4) The department shall review an application for a minor amendment and provide a notice of decision~~  
10 ~~on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the~~  
11 ~~permit is revised in accordance with the application.~~

12 (4) THE DEPARTMENT SHALL REVIEW AN APPLICATION FOR A REVISION OR A MINOR AMENDMENT AND PROVIDE  
13 A NOTICE OF DECISION ON THE ADEQUACY OF THE APPLICATION WITHIN 30 DAYS. IF THE DEPARTMENT DOES NOT RESPOND  
14 WITHIN 30 DAYS, THEN THE PERMIT IS REVISED OR AMENDED IN ACCORDANCE WITH THE APPLICATION.

15 ~~(5)(4)(5)~~ (5) The department is not required to prepare an environmental assessment or an environmental  
16 impact statement for the following categories of action AND PERMIT REVISIONS:

17 (a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review  
18 pursuant to Title 75, chapter 1;

19 (b) administrative actions, such as routine, clerical, or similar functions of a department, including but  
20 not limited to administrative procurement, contracts for consulting services, and personnel actions;

21 (c) repair or maintenance of the permittee's equipment or facilities;

22 (d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement  
23 of environmental standards;

24 (e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon  
25 a given state of facts in a prescribed manner;

26 (f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the  
27 human environment;

28 (g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative  
29 to the entire operation, provided that the increase is less than ~~40~~ 50 25 acres or ~~5%~~ 10% of the permitted area,  
30 whichever is less;

1 (h) changes to an approved reclamation plan if the changes are consistent with this part and rules  
 2 adopted pursuant to this part:

3 ~~(h)(i)~~ changes in an approved operating plan ~~or reclamation plan~~ for an activity that was previously  
 4 permitted, ~~provided that the impacts of~~ if the change changes will be insignificant relative to ~~the impacts of the~~  
 5 entire operation and ~~there is less than 10 acres of additional disturbance~~ the changes are consistent with  
 6 subsection ~~(4)(c)~~ (5)(g); and

7 ~~(i)(j)~~ changes in a permit for the purpose of retention of mine-related facilities that are valuable for  
 8 postmining use."

9

10 **Section 6.** Section 82-4-353, MCA, is amended to read:

11 **"82-4-353. Administrative remedies -- notice -- appeals -- parties.** (1) Upon receipt of an application  
 12 for an operating permit, the department shall provide notice of the application by publication in a newspaper of  
 13 general circulation in the area to be affected by the operation. The notice must be published once a week for 3  
 14 successive weeks.

15 (2) An applicant for a permit or license or for an amendment or revision to a permit or license may  
 16 request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of  
 17 receipt of written notice of the denial. The request must state the reason that the hearing is requested.

18 (3) All hearings and appeals under ~~82-4-337(3)~~ 82-4-337(4), 82-4-338(3)(b), 82-4-341(7) and (8),  
 19 82-4-361, 82-4-362, and subsection (2) of this section must be conducted by the board in accordance with the  
 20 Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an  
 21 action taken pursuant to this part may become a party to any proceeding held under this part upon a showing that  
 22 the person is capable of adequately representing the interests claimed.

23 (4) As used in this section, "person" means any individual, corporation, partnership, or other legal entity."

24

- END -